

Applicants continue to maintain that such a requirement is improper at this stage of the examination, because the asserted "generic" claims have already been fully examined on the merits. Therefore, it is illogical to assert at this point that a serious burden exists to continue to examine these claims on the merits.

Moreover, in making an election of species requirement, the Examiner is required to "clearly identify each . . . of the disclosed species, to which the claims are restricted." M.P.E.P. § 809.02(a) (emphasis omitted). In the Office Communication mailed on November 16, 2005, the Examiner has still not clearly identified the species to which the claims are to be restricted. The Examiner has again simply identified the species as "[v]arious polymeric moieties encompassing numerous monomeric units."

However, in the November 16, 2005 Communication the Examiner has pointed to claims 1 and 30. Even though Applicant maintains that the requirement is improper at this time and the species from which election is to be made is not entirely clear, in an effort to provide a fully responsive reply, Applicant hereby elects, with traverse, as a species for examination purposes, thiolated copolymers of acrylic acid and divinyl glycol as recited in claim 30.

Applicant maintains that the entire restriction requirement set forth in the Office Communication mailed on July 13, 2005 is improper and should be withdrawn. Under the present circumstances, it cannot be reasonably held that there is serious burden on the Examiner to examine all the presently pending claims in a single application.

This application was filed on May 3, 2001 as a national stage application under 35 U.S.C. § 371 of International Application No. PCT/AT99/00265. The first Office Action on the merits, which was mailed on March 27, 2002, included a

complete examination of then pending claims 1 and 28-99. No lack of unity was asserted and no restriction requirement was made in this application by the Examiner before the first action on the merits. Rather, all of the pending claims were fully examined. On August 27, 2002, Applicants added new claims 100-108. The final Office Action, which was mailed on April 9, 2003, examined then pending claims 1 and 28-108. Again, no lack of unity of invention was alleged and no restriction requirement was made. Rather, all of the pending claims were fully examined a second time. In response to the final Office Action, Applicant submitted an Amendment which included the addition of new independent claim 109. After receipt of an Advisory Action, Applicant filed a Request for Examination.

Now, after years of examining practically every claim currently pending in the present single application, the Examiner has decided to impose a lack of unity of invention requirement as well as an election of species requirement. However, the history in this case establishes that there is no serious burden on the Examiner to examine all the claims in a single application. Indeed, all of the claims were previously examined and reconsidered by the Examiner in the same application (with the single exception of claim 109, which has been placed in Group VI with claims 74-81 and 100-108 that were previously examined on the merits in the same single application).

Since there is no serious burden on the Examiner to examine all the presently pending claims in a single application, the lack of unity and election of species requirements are not proper and should be withdrawn.

Applicant reserves the right to file one or more divisional applications directed to any of the non-elected subject matter.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would contact the undersigned attorney at the telephone number below concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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(Including attorneys from Burns, Doane,
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